(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 951/2005

APPELLANT National Insurance Company Ltd.

Versus

RESPONDENTS Vyas Narayan Dewangan and anr.

Order post for 23-4-2007

Sd/-
DHIRENDRA MISHRA
Judge

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 951/2005

APPELLANT		National Insurance Company Ltd. through: its Divisional Manager, Divisional Office, Mobin Mahal, G.E. Road, Raipur (C.G.)
		Versus
RESPONDENTS Applicant	1.	Vyas Narayan Dewangan S/o. Ram Pyare Dewangan aged 35 years, R/o. Vill. Arang, P.S. Arang, Distt. Raipur (C.G.) at present – Imali Bhata, Mahasamund, Distt. Mahasamund (C.G.)
Non-applicant no. 1.	2.	Mohd. Iliyas Gori, S/o. Jalauddin aged 33 years, R/o. Gandhi Chowk, Arang, Distt. – Raipur (C.G.)

Shri Dasrath Gupta, Adv. for the appellant.
None appears for the respondents.

J U D G M E N T

Dhirendra Mishra, J.

The appellant/Insurer has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 against the award dated 12th May, 2005 passed by learned Second Additional Motor Accident Claims Tribunal, Mahasamund in Claim Case No. 16/2005, whereby the learned Tribunal has awarded a sum of Rs. 1,000/- with interest at the rate of 6% from the date of application to the respondent No. 1. The appellant and respondent No. 2 have been held liable to pay the above compensation jointly and severely.

2. The short question involved for adjudication of this appeal is that whether an application under Section 166 of the Act at the instance of owner of the vehicle involved in the accident is maintainable.

3. Learned counsel for the appellant placing reliance on the judgment of the Supreme Court in the matters of **Oriental Insurance Co. Ltd. –v- Smt. Jhuma Saha and others** reported in **2007 AIR SCW 859** and **Dhanraj –v- New India Assurance Co. Ltd. and another** reported in **2005(1) T.A.C. 1 (S.C.),** submitted that undisputedly if the owner of the vehicle himself

getting injured due to his own negligence, the insurer cannot be made liable for payment of compensation. It is further contended that there is no evidence available on record that the appellant cover any risk of the injury to the owner himself and, therefore, the appellant-Insurance Company could not be saddled with the liability of payment of compensation.

4. I have heard learned counsel for the appellant. I have perused the impugned award as also oral and documentary evidence available on record.

5. In the matter of **Oriental Insurance Co. Ltd** (supra), the Hon'ble Supreme Court in para 11 has held thus:-

> "The liability of the insurer-company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."

6. In the matter of **Dhanraj** (Supra) Hon'ble Supreme Court has laid down the law in para 6 as under:-

> "Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle."

7. In view of the above binding judgments, this Court is of the considered opinion that the Claims Tribunal was not justified in fastening the liability of payment of compensation upon the appellant-Insurance Company to the owner. On the basis of the aforesaid discussion, the instant appeal preferred by the appellant-Insurance Company is allowed and the appellant is absolved from the liability of satisfying the impugned award.

Sd/-
DHIRENDRA MISHRA
Judge

23-4-2007